

PSJ2 Exh 69

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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IN RE: NATIONAL PRESCRIPTION MDL No. 2804  
OPIATE LITIGATION

Case No. 17-md-2804

Judge Dan Aaron

This document relates to: Polster

County of Cuyahoga v. Purdue  
Pharma L.P., et al.

Case No. 17-OP-45004

City of Cleveland, Ohio v. Purdue  
Pharma L.P., et al.

Case No. 18-OP-45132

The County of Summit, Ohio, et al.  
v. Purdue Pharma L.P., et al.

Case No. 1:18-OP-45909

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Volume 2

Continued videotaped deposition of
MARY APPLGATE, M.D.

March 28, 2019

9:01 a.m.

Taken at:
Sheraton at Capitol Square
75 East State Street
Columbus, Ohio

Renee L. Pellegrino, RPR, CLR

1 paragraph that starts with, "Also present," the
2 last sentence says, "Approximately 13 observers
3 were present, most representing pharmaceutical
4 manufacturers."

5 Do you see that?

6 A. Let me find it.

7 Q. Sure.

8 A. Yes, I see that.

9 Q. So you would agree that during your
10 time at the Medicaid entity that it's been a
11 constant that pharmaceutical industry has been
12 represented at open meetings, correct?

13 MS. O'GORMAN: Objection.

14 MS. LINN: You can answer.

15 A. That is what the minutes reflect,
16 yes.

17 Q. Let's go back to Exhibit 10 now that
18 we've looked at those. Exhibit 10 are the
19 meeting minutes that are dated October 7th of
20 2009, and this was put in front of you as part
21 of the first part of your deposition. I want to
22 ask you a question about something that appears
23 at the bottom of the front page and continues on
24 to the second page.

25 Under Subsection 2 at the bottom do

1 you see it says, "Drugs under consideration"?

2 A. Yes.

3 Q. And under that, under Subsection B,
4 it's analgesics.

5 Do you see that?

6 A. Yes.

7 Q. If you go down to the last sentence
8 that's on this page, it says, "Dr. Wilker also
9 asked about addiction potential because the drug
10 is C2, and according to the clinical
11 presentation, has fewer side effects than
12 traditional opioids."

13 Do you see that?

14 A. Yes.

15 Q. Do you see that based on the context
16 of this paragraph, they're talking about an
17 opioid called Nucynta?

18 A. Yes.

19 Q. If you go on to the second page
20 there, you'll see it says, "The manufacturer's
21 representative said there is potential for
22 addiction but Nucynta has less opioid activity
23 than traditional opioids."

24 Do you see where I've read that
25 from?

1 A. I do.

2 Q. So in this instance we've got a
3 manufacturer that has a representative there
4 that is commenting on the safety profile of its
5 drug, Nucynta, fair?

6 A. Yes.

7 Q. And this manufacturer's
8 representative is saying that while there's
9 potential for addiction, that Nucynta has less
10 opioid activity than traditional opioids; is
11 that fair?

12 A. That is what this states.

13 Q. And based upon that, it's leaving
14 the conclusion that it's a safer alternative
15 than other opioids?

16 MR. DOVE: Objection to form.

17 MS. LINN: You can --

18 A. That is what's indicated in this
19 paragraph.

20 Q. If you wouldn't mind going to
21 Exhibit 9 now. Exhibit 9 is a later meeting,
22 it's approximately two years later, June 29th of
23 2011.

24 Do you see that?

25 A. Yes.

1 Q. And if you go to the second page, 2
2 of 6, under "Analgesic Agents Opioids" -- do you
3 see that heading?

4 A. Yes.

5 Q. You'll see here two years later
6 Dr. Hunter said he is in favor of Nucynta based
7 on the potential for less diversion. The
8 committee voted 7 to 1 in favor of the preferred
9 status for Nucynta.

10 Do you see that?

11 A. I do.

12 Q. So here two years prior to this you
13 see a manufacturer representative for Nucynta,
14 which would be Ortho Janssen McNeil, lobbying on
15 behalf of Nucynta, correct?

16 MS. O'GORMAN: Objection.

17 MS. LINN: You can answer.

18 A. Yes, it appears so.

19 Q. And two years later there's a
20 placement of Nucynta on the preferred drug list;
21 is that fair?

22 A. Yes.

23 Q. You can set that to the side.

24 I'm going to put in front of you
25 what I'm marking as Exhibit 34, which is the

1 label that was in place at the time for Nucynta
2 of the 2009 meeting. You'll see that on the
3 front page of Exhibit 34, on the bottom
4 right-hand side, it says, "Revised 03/2009."

5 - - - - -
6 (Thereupon, Applegate Deposition
7 Exhibit 34, Nucynta Label, was
8 marked for purposes of
9 identification.)

10 - - - - -

11 Q. Do you see that?

12 A. Yes.

13 Q. And you recall that when we looked
14 at Exhibit 10, that that meeting was October 7th
15 of 2009, correct?

16 A. Correct.

17 Q. So it appears that this would be the
18 label that was in place at the time of that
19 meeting, fair?

20 A. Yes.

21 Q. And if you go to page 5 of this,
22 you'll see that there's a section that says,
23 "Misuse and Abuse."

24 Do you see that?

25 A. I do.

1 Q. And here it says that Tapentadol,
2 which is the generic name for Nucynta, that
3 Tapentadol is a new opioid agonist and is a
4 Schedule 2 controlled substance. Such drugs are
5 sought by drug abusers and people with addiction
6 disorders. Diversion of Schedule 2 products is
7 an act subject to criminal penalty.

8 Do you see that?

9 A. Yes.

10 Q. Further, it says, "Nucynta can be
11 abused in a manner similar to other opioid
12 agonists, illegal or illicit."

13 Do you see that?

14 A. Yes.

15 Q. It doesn't say anything about this
16 being a different kind of opioid that's not
17 subject to abuse, does it?

18 A. It does not.

19 Q. Going further into the label, on
20 page 12, under Subsection 9, at the very bottom,
21 it again repeats a similar sentence, "Nucynta
22 contains Tapentadol, a new opioid agonist, and
23 is a Schedule 2 controlled substance," and it
24 says, "Nucynta has an abuse potential similar to
25 hydromorphone, can be abused and is subject to

1 criminal diversion."

2 Do you see that?

3 A. I do.

4 Q. Are you familiar with what
5 hydromorphone is?

6 A. Yes.

7 Q. And is that Dilaudid?

8 A. Yes.

9 Q. Dilaudid is a substance that
10 everyone is aware now can be abused, correct?

11 A. Yes.

12 Q. But here you've got a manufacturer
13 telling you that the abuse potential for this
14 particular drug was less, correct?

15 MS. O'GORMAN: Objection.

16 MR. DOVE: Object to the form.

17 A. That's correct.

18 Q. And they were coming to the meetings
19 in an attempt to be placed on a preferred
20 formulary, fair?

21 MS. O'GORMAN: Objection.

22 MR. DOVE: Object to the form.

23 A. That's correct.

24 Q. And these are the same manufacturers
25 and industry components that are not funding